

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF NURSING

In the Matter of the Nursing
License of Christine L. Pullen,
L.P.N. License No. 20304-3

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter was scheduled for a prehearing conference before Administrative Law Judge Steve M. Mihalchick of the Minnesota Office of Administrative Hearings at 1:30 p.m. on June 24, 1996, at the Board of Nursing Office, Suite 108, 2700 University Avenue West, St. Paul, Minnesota. Louis Hoffman, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Review Panel of the Minnesota Board of Nursing ("the Board"). There was no appearance by or on behalf of the Respondent, Christine L. Pullen. The record closed on June 26, 1996, upon receipt of the Review Panel's letter advising of Respondent's failure to appear at the prehearing conference.

This Report is a recommendation, not a final decision. The Board of Nursing will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Joyce M. Schowalter, Executive Director, Minnesota Board of Nursing, 2700 University Avenue West, Suite 108, St. Paul, Minnesota 55104, telephone number 612/642-0567, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether disciplinary action should be taken against the L.P.N. license of the Respondent on the grounds set forth in Minn. Stat. §§ 148.261 and 148.262 (1994).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 3, 1996, a Notice of Conference with Board of Nursing Review Panel was mailed to Respondent at Route 2, Box 876, Ogilvie, Minnesota 56358. That address was the last known address for the Respondent according to the records of the Board of Nursing. The Notice was returned with a handwritten notation on the envelope, "Return to sender, not at this address." Board staff inquired at Respondent's former employer to obtain a more current address or telephone number. The address with the former employer was identical as that used by the Board. Board staff called the telephone number on file with the former employer and was told by the person who answered that Respondent no longer lived there and she had left no forwarding information.

2. The Notice of and Order for Prehearing Conference and Hearing in this matter was served upon the Respondent by first-class mail at Route 2, Box 876, Ogilvie, Minnesota 56358, on March 28, 1996.

3. The Notice of and Order for Prehearing Conference and Hearing served on the Respondent contained the following informational notice in the paragraph ordering the prehearing conference:

Respondent is urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against Respondent.

4. There has been no contact between Respondent and the Review Panel regarding this matter. Respondent did not file any Notice of Appearance with the Administrative Law Judge, provide a telephone number to counsel for the Board or to the Administrative Law Judge, or make any prehearing request for a continuance or any other relief. Respondent did not appear at the prehearing conference scheduled for June 24, 1996, or have an appearance made on her behalf.

5. Because Respondent failed to appear at the prehearing conference in this matter, she is in default. Pursuant to Minn. Rule 1400.6000 (1993), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Board of Nursing and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 148.261, and 214.10 (1994).

2. The Board of Nursing has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Minnesota Board of Nursing has the authority to take disciplinary action against licensed practical nurses, including the Respondent, under Minn. Stat. §§ 148.261 and 148.262 (1994).

4. The rules of the Board of Nursing require licensees to maintain with the Board a correct mailing address for the purpose of receiving Board communications or notices. Minn. Rule 6310.2900, subp. 1 (1993).

5. Minn. Stat. §148.261, subd. 1 (1994), provides, in pertinent part, as follows:

The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice professional or practical nursing under sections 148.171 to 148.285, or to otherwise discipline a licensee or applicant as described in section 148.262. The following are grounds for disciplinary action:

* * *

(3) Conviction during the previous five years of a felony or gross misdemeanor reasonably related to the practice of nursing. . . .

* * *

(8) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.

* * *

(21) . . . failing to cooperate with an investigation of the board as required by section 148.265.

* * * *

6. Pursuant to Minn. Stat. § 148.265 (1994), “[a] nurse who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or other records in the nurse’s possession, as reasonably requested by the board, to assist the board in its investigation and to appear at conferences and hearings scheduled by the board”

7. Respondent has failed to fully cooperate with the investigation by the Review Panel by failing to maintain a current address on record with the Board.

8. Respondent is in default herein under Minn. Rule 1400.6000 (1993) as a result of her failure to appear at the prehearing conference.

9. Under Minn. Rule 1400.6000 (1993), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing may be taken as true or deemed proved without further evidence when a party fails to appear at the hearing.

10. Under Minn. Rule 1400.7300, subp. 5 (1993), the Board of Nursing has the burden of establishing by a preponderance of the evidence the statutory violations charged.

11. As a result of the Respondent's default, the Board of Nursing has met its burden of proof with respect to the issues of Respondent's fitness to practice nursing and failure to cooperate with an investigation of the Review Panel.

12. The Board of Nursing has not met its burden of proof to show that Respondent has been convicted of a felony or gross misdemeanor reasonably related to the practice of nursing.

13. Respondent's conduct as set forth in the Notice of and Order for Prehearing Conference and Hearing and incorporated herein pursuant to Finding of Fact No. 5 violates Minn. Stat. §§ 148.261, subd. 1(8) and (21), and 148.265 (1994).

14. As a result of the statutory violations set forth in Conclusion No. 12, the Board of Nursing has the power to deny, suspend, revoke, or restrict Respondent's license, or to otherwise discipline her as set forth in Minn. Stat. §148.262 (1994).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Board of Nursing take disciplinary action against the L.P.N. license of Respondent, Christine L. Pullen.

Dated this ____ day of July, 1996.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The Notice of and Order for Prehearing Conference and Hearing served on Respondent forms the record in this matter, due to Respondent's default. The

allegations in that document substantiate Respondent's inability to practice nursing due to the abuse of alcohol and noncooperation with the Review Panel's investigation by not maintaining a current address with the Board. Disciplinary action is appropriate on these charges.

The only evidence supporting the alleged violation of Minn. Stat. § 148.261, subd. 1(3), is the allegation which reads:

g. On February 23, 1995, Respondent failed to report for work or call in sick. Respondent was involved in a car accident and was charged with driving under the influence.

Notice of and Order for Prehearing Conference and Hearing, at 3.

The allegation does not indicated whether the charge is for a misdemeanor or gross misdemeanor. Further, there is no indication that this charge resulted in a conviction. Minn. Stat. § 148.261, subd. 1(3), requires a conviction before adverse action can be taken. The Review Panel has not demonstrated that Respondent was convicted of a felony or gross misdemeanor reasonably related to the practice of nursing. No disciplinary action can be taken based upon that charge.

S.M.M.